

## § 270.24b-2

(2) any sales letter a substantial portion of which consists of a statement which is in essence identical with similar statements in sales letters sent to 25 or more persons within any period of 90 consecutive days.

(b) The term *distribution* as used in section 24(b) of the Act includes the distribution or redistribution to prospective investors of the content of any written sales literature, whether such distribution or redistribution is effected by means of written or oral representations or statements.

(c) The terms *rules and regulations* as used in section 24 (a) and (c) of the Act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto.

(Sec. 19, 48 Stat. 85, as amended, sec. 319, 53 Stat. 1173; 15 U.S.C. 77s, 77sss)

[Rule N-24B-1, 6 FR 3020, June 21, 1941, as amended by 21 FR 1046, Feb. 15, 1956]

## § 270.24b-2 Filing copies of sales literature.

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act (15 U.S.C. 80a-24(b)) either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material.

[70 FR 43570, July 27, 2005]

## § 270.24b-3 Sales literature deemed filed.

Any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Act [15 U.S.C. 80a-24(b)] upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o] that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

[53 FR 3880, Feb. 10, 1988]

## 17 CFR Ch. II (4-1-10 Edition)

## § 270.24e-1 Filing of certain prospectuses as post-effective amendments to registration statements under the Securities Act of 1933.

Section 24(e) of the Act requires that when a prospectus is revised so that it may be available for use in compliance with section 10(a)(3) of the Securities Act of 1933 for a period extending beyond the time when the previous prospectus would have ceased to be available for such use, such revised prospectus, in order to meet the requirements of section 10 of said Act, must be filed as an amendment to the registration statement under said Act and such amendment must have become effective prior to the use of the revised prospectus. Except as hereinabove provided, section 24(e) of the Act shall not be deemed to govern the times and conditions under which post-effective amendments shall be filed to registration statements under the Securities Act of 1933.

(Sec. 24, 54 Stat. 825, as amended; 15 U.S.C. 80a-24)

[20 FR 2856, Apr. 28, 1955, as amended at 62 FR 47938, Sept. 12, 1997]

## § 270.24f-2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company or unit investment trust (“issuer”) that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a-24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F-2 (17 CFR 274.24) with the Commission. Form 24F-2 must be prepared in accordance with the requirements of that form, and must be accompanied by the payment of a registration fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An issuer that pays the registration fee more than 90 days after the end of its fiscal year must pay interest in the manner specified in section 24(f) of the Act and in Form 24F-2.

(b) *Issuer ceasing operations; mergers and other transactions.* For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets ("merger") of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; *provided, however*, that in the case of a merger of an issuer or a series of an issuer ("Predecessor Issuer") with another issuer or a series of an issuer ("Successor Issuer"), the Predecessor Issuer will not be deemed to have ceased operations and the Successor issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred pursuant to section 24(f) of the Act and § 270.24e-2 (as in effect prior to October 11, 1997; see 17 CFR part 240 to end, revised as of April 1, 1997) if the Successor Issuer:

(1) had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(2) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(3) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (b)(1) of this section.

(c) *Counting days.* To determine the date on which Form 24F-2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90-day period is the first calendar day of the fiscal year following the fiscal year for which the Form is to be filed. If the last day of the 90-day period falls on a Saturday, Sunday, or federal holiday, the period ends on the first business day thereafter.

NOTE TO PARAGRAPH (c): For example, a Form 24F-2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday, Sunday, the Form must be filed on the following Monday.

[62 FR 47938, Sept. 12, 1997]

**§ 270.26a-1 Payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts.**

(a) For purposes of section 26(a)(2)(C) of the Act, payment of a fee to the depositor or a principal underwriter for a registered unit investment trust, or to any affiliated person or agent of such depositor or underwriter (collectively, "depositor"), for bookkeeping or other administrative services provided to the trust shall be allowed the custodian or trustee ("trustee") as an expense, *Provided*, That such fee is an amount not greater than the expenses, without profit: (1) Actually paid by such depositor directly attributable to the services provided and (2) increased by the services provided directly by such depositor, as determined in accordance with generally accepted accounting principles consistently applied.

(b) A registered separate account, and any depositor or principal underwriter for such account, shall be exempt from the provisions of sections 26(a) and 27(c)(2) of the Act [15 U.S.C. 80a-26(a) and 80a-27(c)(2)] with respect to any variable annuity contract participating in such account to the extent necessary to permit the deduction of any fee that would be allowed a trustee as an expense as provided in paragraph (a) of this section, *Provided*, That the standard used in paragraph (a) of this section shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not be greater than the cost of the services to be provided for one year; if the fee is guaranteed not to increase for a specified period of time, the fee shall not be greater than the average expected cost of the services to be provided during the period of the guarantee.

(Sec. 6(c), 26(a), and 38(a) (15 U.S.C. 80a-6(c), 80a-26(a), and 80a-37(a)))

[49 FR 31063, Aug. 3, 1984]